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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

13 Cr. 485 (CM)

FAOUZI JABER,
a/k/a "Excellence,"

Defendant.

Sentence

New York, N.Y.
February 1, 2018
4:00 p.m.

Before:

HON. COLLEEN MCMAHON,

District Judge

APPEARANCES

GEOFFREY S. BERMAN
Interim United States Attorney for
the Southern District of New York
GEORGE D. TURNER
Assistant United States Attorney

ALEXEI M. SCHACHT
Attorney for Defendant

Also Present: Marwan Abdel-Rahman, Interpreter (Arabic)

I21WjabS

(Case called)

MR. TURNER: Good afternoon, your Honor. George Turner, for the government.

MR. SCHACHT: Good afternoon. Alexei Schacht, for the defendant.

THE COURT: Good afternoon.

And the interpreter, please.

THE INTERPRETER: Marwan Abdel-Rahman.

THE COURT: Good afternoon. Can we resolve the technical difficulty?

Mr. Schacht, when did you come into this case?

MR. SCHACHT: I guess about two months ago.

THE COURT: Counsel.

(At sidebar)

THE COURT: Are you aware that Mr. Turner clerked for me? He was my law clerk once upon a time, a long time ago, which was fully disclosed at the beginning of the case. Ms. Shroff said she had no issue with it and her client had no issue with it. I didn't know if you knew that, and I wanted to be sure you did so that we're not going ahead if you'd think that that was a problem.

MR. SCHACHT: Thank you. I was not aware of that, and I have absolutely no problem of that.

THE COURT: Fine. I just wanted you to be aware.

MR. SCHACHT: Excess of caution.

I21WjabS

1 THE COURT: Excess of caution.

2 MR. SCHACHT: Thank you.

3 (In open court)

4 THE COURT: This matter is on for sentencing under
5 docket No. S1 13 Cr. 485-01, United States of America v. Faouzi
6 Jaber, Mr. Jaber, having been found guilty by plea to one count
7 of conspiracy to provide material support or resources to a
8 foreign terrorist organization, a class C felony, in violation
9 of 18 U.S.C. Section 2339B(a)(1), (d)(1)(C), (d)(1)(D),
10 (d)(1)(E) and 3238.

11 This crime carries a statutory maximum penalty of 15
12 years' imprisonment; lifetime supervised release; a \$250,000
13 fine, or twice the gross gain to the defendant or loss to
14 identifiable victims other than the defendant; and a \$100
15 special assessment.

16 In connection with today's proceeding, I have received
17 and reviewed the presentence report prepared by United States
18 Probation Officer Specialist Ross Kapitansky. I have reviewed
19 the government's sentencing memorandum, dated January 25, 2018,
20 and I have reviewed the sentencing memorandum that Mr. Schacht
21 has filed on behalf of Mr. Jaber. It has attached to it
22 exhibits A, B, C, D, E, and that includes some letters on
23 behalf of the defendant and information about the defendant's
24 life expectancy and about how he got here, into this country,
25 in the first place and how some other people didn't get into

I21WjabS

1 this country.

2 I have reviewed all of those exhibits with care.

3 Is there anything else that I should have seen in
4 writing prior to today's proceedings?

5 From the government.

6 MR. TURNER: No, your Honor.

7 THE COURT: From the defendant.

8 MR. SCHACHT: No, your Honor.

9 THE COURT: Has the government reviewed the
10 presentence report?

11 MR. TURNER: Yes, Judge.

12 THE COURT: Are there any additions, deletions or
13 corrections?

14 MR. TURNER: No, your Honor.

15 THE COURT: Let me ask the same question of defense
16 counsel. Counsel, have you reviewed the presentence report,
17 and have you gone over it with your client?

18 MR. SCHACHT: Yes, your Honor.

19 THE COURT: And did you do that with the assistance of
20 an interpreter?

21 MR. SCHACHT: Yes.

22 THE COURT: Are there any additions, deletions or
23 corrections you think should be made to that document?

24 MR. SCHACHT: No, your Honor.

25 THE COURT: OK. Have a seat.

I21WjabS

1 Here's what occurs to me as I'm sitting here with
2 these two documents. First of all, we're up against a
3 statutory maximum of 15 years, which is well, well below the
4 sentencing guidelines range, but I have two wildly divergent
5 stories here, and I mean wildly divergent stories, about
6 Mr. Jaber. I wonder if there's enough congruence between these
7 two stories to allow me to go ahead with sentencing today, or
8 are they so incongruent that there's a need for a Fatico
9 hearing. I would like to hear what people think about that.

10 Mr. Turner.

11 MR. TURNER: Your Honor, the offense conduct that is
12 set forth in the PSR is undisputed, and while the parties'
13 submissions do put different --

14 THE INTERPRETER: Your Honor, if Mr. Turner kindly
15 speaks into the microphone so interpreter can hear him, because
16 I'm not using any equipment.

17 THE COURT: Thank you.

18 MR. TURNER: Your Honor, I'll start again.

19 The offense conduct that is set forth in the PSR is
20 undisputed, and while the parties' submissions make arguments
21 and take different views as to the defendant's culpability, we
22 do not believe that there are factual disputes that warrant or
23 necessitate a hearing.

24 THE COURT: And from the defendant.

25 MR. SCHACHT: Your Honor, it is true that there's not

I21WjabS

1 really a dispute about some of the basic facts in the case, but
2 the case is reduced in the probation report to really two or
3 three pages of offense conduct. I've reviewed or I have had
4 the chance to review hundreds out of the thousands of pages of
5 discovery, and so if you took a more wide-ranging view, I think
6 we do have a dispute about what the facts are.

7 THE COURT: In that case, we need to schedule a Fatico
8 hearing. This is not something that I say lightly. This is
9 not something that I enjoy doing, and I'm a pretty busy person.

10 First of all, the defendant's role in the offense has
11 something to do with how I sentence him; and second, it just
12 looks to me like we were talking about two entirely different
13 situations here. It's very strange reading these two documents
14 side by side, which I did as recently as two days ago.

15 MR. SCHACHT: Judge, in preparation for today, I was
16 looking through some of the transcripts of the conversations
17 with the informants and my client, and I think what happens,
18 probably, is the government takes the fact that the defendant
19 was present, obviously, and participated in this and is guilty,
20 and he admits he's guilty, and then they focus simply on the
21 fact that he was present when these conversations occurred
22 about the sale of missiles and so on. But really, if you scope
23 out and look at all of the conversation, my client was the
24 person who introduced the people. My client doesn't have
25 access to missiles himself personally, otherwise he wouldn't

I21WjabS

1 have brought in anyone. My client doesn't have access to
2 drugs, otherwise, he would have just kept 100 percent of the
3 profit and done it all himself.

4 THE COURT: That's kind of irrelevant, is it not? He
5 knew somebody who could get drugs.

6 MR. SCHACHT: Yes.

7 THE COURT: He knew somebody who could get missiles.
8 The government has represented Mr. Jaber to be a drugs and arms
9 dealer. That doesn't mean he's growing the drugs and that
10 doesn't mean he's processing the drugs. Most of the big-time
11 drug dealers that I've put away don't do either of those
12 things. They acquire them from other people, which makes them
13 coconspirators.

14 MR. SCHACHT: Yes, and I'm looking at one of the
15 DEA-6s that I happened to bring with me today. The person who
16 introduced my client to the informant is a man named Makki, and
17 this is in a DEA-6: "Mr. Makki explained to the informant that
18 he did not think Mr. Jaber could even get cocaine." Obviously
19 I'm not saying he's not guilty of the crime.

20 THE COURT: So what?

21 MR. SCHACHT: I'm saying he's not the criminal
22 mastermind, our position is, that the government's presentation
23 sort of implies.

24 THE COURT: It doesn't imply.

25 MR. SCHACHT: Or states.

I21WjabS

1 THE COURT: He states it flat out.

2 MR. SCHACHT: Yes.

3 THE COURT: One thing I can say about Mr. Turner is I
4 know that he writes well and clearly.

5 MR. SCHACHT: And I think we have a dispute about
6 that.

7 MR. TURNER: Judge, the facts that have been outlined
8 by defense counsel just now are not in dispute. The defendant
9 was the facilitator of this transaction. He introduced both El
10 Merebi and Fayad. Fayad was going to supply the weapon. El
11 Merebi was the cocaine trafficker. None of those facts are in
12 dispute.

13 THE COURT: I personally wouldn't know someone who
14 could supply either cocaine or weapons to anybody. I don't
15 know how to do that. I don't know if you know how to do that.
16 I don't know if Mr. Turner knows how to do that. I don't know
17 if Ms. Shroff ever knows how to do that. We don't know how to
18 do that. OK?

19 Mr. O'Neil doesn't know how to do that. The court
20 reporter doesn't know how to do that, but your client knows how
21 to do that, right, because he did that?

22 MR. SCHACHT: Yes. Yes, my client was a high-ranking
23 government official in a country where he knew people who were
24 in the arms business, and he knew that. I suspect you would
25 find people in many countries who are high-ranking government

I21WjabS

1 officials, assistants to the president of the country who know
2 about how to get weapons.

3 My client was himself a drug addict, and he certainly
4 knew many people who could supply drugs.

5 THE COURT: OK.

6 Yes, Mr. Turner.

7 MR. TURNER: I was going to add, your Honor, that
8 these are the sorts of mitigating arguments that are made at
9 sentencing, but there is no dispute here as to the underlying
10 facts of what happened during this transaction.

11 THE COURT: OK. I think in the end that Mr. Turner is
12 probably correct here, just based on the statements made by
13 defense counsel, and he's made a very powerful presentation
14 here, as has Mr. Schacht. But just based on the statements
15 that are made today, if all I do for purposes of sentencing is
16 find that his client, a high-ranking official in a foreign
17 country, who knew where weapons and drugs could be bought,
18 facilitated transactions involving those weapons and drugs,
19 transactions that he believed were going to go down with a
20 terrorist organization in Colombia, and I make no other
21 findings, I need to make no other findings, and what we're
22 talking about is nuance.

23 Is that a fair statement?

24 Mr. Turner.

25 MR. TURNER: We agree with that statement, with the

I21WjabS

1 addition that there is some additional information set forth in
2 the PSR, which we understand to be undisputed, documenting the
3 existence of the meetings, the participants and the general
4 nature of the discussions that took place.

5 THE COURT: OK. But even so, the basic, bare bones
6 fact that a high-ranking official in a foreign government knows
7 where to get arms and facilitates a transaction to supply arms
8 to a terrorist organization, that's enough to get me to a
9 15-year sentence, which is what you want, right?

10 MR. TURNER: Yes, Judge. We believe that is an
11 accurate summary, at a high level, of what transpired and that
12 it supports the sentence the government is seeking, a
13 guidelines sentence.

14 THE COURT: Do I have to get any more specific? I
15 don't think so.

16 MR. TURNER: Judge, we believe that the conduct you
17 just described, facilitating a transaction to supply weapons
18 and drug-trafficking services to a terrorist organization,
19 fully supports a guidelines sentence.

20 THE COURT: OK. Mr. Turner, do you want to be heard
21 on sentence?

22 MR. TURNER: Judge, very briefly.

23 we have set forth in our submission that a guidelines
24 sentence here of 180 months' imprisonment is warranted to
25 reflect the seriousness of the defendant's conduct and to deter

I21WjabS

1 both the defendant and other international traffickers from
2 engaging in similar conduct. The defendant's conduct was
3 extremely serious. He coordinated and facilitated an
4 international transaction involving the supply of weapons,
5 drugs and money-laundering services to a terrorist
6 organization. He did so knowingly, and that conduct is of the
7 utmost seriousness.

8 The guidelines sentence is also warranted to deter
9 both the defendant as well as other international traffickers,
10 driven by profit, as the defendant was here, who are willing to
11 engage in not only this independently dangerous conduct but to
12 do so to benefit a dangerous terrorist organization, Judge.

13 THE COURT: Counsel, let's look at page 2 of the
14 government's letter of January 25, 2018. It says at the bottom
15 of the first full paragraph that in a recorded call, Mr. Jaber
16 indicated that he was capable of facilitating the business that
17 was discussed, which was weapons, cocaine and money laundering,
18 and cautioned the individuals on the phone to be careful when
19 communicating by phone or email.

20 Does the defendant dispute that that is an accurate
21 rendition of a statement made by your client during a recorded
22 phone call?

23 MR. SCHACHT: No, we don't contest that.

24 THE COURT: OK. Let's go to the next paragraph, which
25 talks about a meeting a few weeks later. It says during that

I21WjabS

1 meeting, which was recorded, your client, Mr. Jaber, conveyed
2 that he was capable of facilitating, one, the supply of weapons
3 to the FARC for use against American and Colombian forces in
4 Colombia; two, storing, protecting and transporting cargo and
5 cocaine in Africa; and three, laundering cocaine-trafficking
6 proceeds for the FARC.

7 Does your client dispute the statements allegedly made
8 by or attributed to him in that recorded phone conversation?

9 MR. SCHACHT: I dispute it only inasmuch as I don't
10 think my client ever used the word "FARC" himself. My client
11 did not know what FARC was. The people who were targeted --

12 THE COURT: Is there a transcript of this phone
13 conversation?

14 MR. SCHACHT: There is somewhere, I'm sure.

15 THE COURT: You don't? OK.

16 MR. TURNER: Judge, what's relayed here is not that
17 the defendant necessarily used the word "FARC" but that he
18 conveyed that he was capable of facilitating the transactions
19 that are described.

20 THE COURT: One of which was supplying weapons to
21 FARC, right?

22 MR. TURNER: Correct.

23 THE COURT: OK. Does the defendant dispute that?

24 MR. SCHACHT: No. All I was saying, your Honor, is
25 the way it's written there, it makes it look like my client

I21WjabS

1 said something about FARC; he didn't. He said he's capable of
2 facilitating these transactions. He just didn't say for FARC.
3 That's all I was disputing.

4 THE COURT: OK. The next paragraph describes meetings
5 that took place in November of 2012, during those meetings,
6 which were recorded, after being informed that a portion of the
7 FARC's cocaine was transported to New York, Jaber advised that
8 he was capable of moving money for the FARC from overseas
9 locations to New York, and with respect to the weapons
10 component of the potential deal, Jaber explained he would
11 contact his weapons suppliers once CS-2 sent Jaber a list of
12 the particular weapons he needed, and he asked CS-2 to specify
13 the locations where the weapons would be delivered.

14 Does your client dispute that he said substantially
15 those things in a recorded telephone conversation or at a
16 recorded meeting?

17 (Counsel conferred with defendant)

18 MR. SCHACHT: Yes, your Honor. I'm sorry. I just
19 needed to consult with my client for a moment.

20 THE COURT: Of course.

21 MR. SCHACHT: My client's recollection of the phone
22 call was that he had said that he would introduce another
23 person, Jean-Pierre Moreau, who could help do these things.

24 THE COURT: You know what I'm going to do? I want the
25 transcripts.

I21WjabS

1 MR. SCHACHT: My client pled guilty, Judge.

2 THE COURT: I want the transcripts. I think that's
3 fair.

4 Is that fair, Mr. Turner? I think it's fair. I'd
5 like these transcripts -- the translations, obviously -- of
6 these recorded conversations. I'd like to see them.

7 MR. TURNER: Judge, we can work to obtain transcripts
8 of calls or meetings that your Honor wishes to review.

9 THE COURT: Apparently defense counsel has reviewed
10 them, so why can't I review them?

11 MR. TURNER: We can certainly --

12 THE COURT: He doesn't speak Arabic, or I don't know,
13 maybe he does.

14 MR. SCHACHT: I don't speak Arabic, your Honor.

15 MR. TURNER: Judge, we can submit transcripts that
16 have been provided to the defense to the Court, if the Court
17 wishes.

18 Again, we are highlighting that these facts have been
19 set forth in the PSR. We don't understand there to be a
20 dispute as to the substance of the conversations.

21 THE COURT: I understand there to be a dispute,
22 Mr. Turner. I understand the defendant to be disputing it, and
23 I'd like to read the transcripts myself, because you clearly
24 say things that would cause me to give this man a guidelines
25 sentence. OK? And I have a letter here from a reputable

I21WjabS

1 lawyer who says he has reviewed these things, and it comes
2 across totally differently. I just think it would be useful
3 for me to see the transcripts.

4 MR. SCHACHT: Your Honor, I appreciate that, but I
5 don't intend for anything I say whatsoever to be a withdrawal
6 of my client's acceptance of responsibility. He committed this
7 crime.

8 THE COURT: Yes, I understand that, and you want me to
9 sentence him to time served, and Mr. Turner wants me to
10 sentence him to 15 years, and the reason you want me to
11 sentence him to time served is you say, Oh, you know, he was
12 like a, kind of a, not an innocent bystander, but not much of a
13 participant. And this letter from the government portrays him
14 as quite a driving force in this matter.

15 MR. SCHACHT: Well, no.

16 THE COURT: And I want to know, since there are
17 recordings of the conversations, if there really is a dispute
18 about whether he was just somebody who made an introduction
19 versus somebody who really said, I can do this, I can do that,
20 I can do the other, I can fix you up with this, I can do that.
21 I'd like to know. I'd like to be sure in my own mind before I
22 send your client away for 15 years that what Mr. Turner says in
23 his letter is true.

24 MR. SCHACHT: I appreciate that, your Honor, but my
25 client clearly was the point person who was contacted by the

I21WjabS

1 informant. He was integral. But for my client introducing
2 these other men, the crime could never have occurred, so he was
3 essential.

4 THE COURT: Without your client.

5 MR. SCHACHT: He was essential.

6 THE COURT: He's essential.

7 MR. SCHACHT: He was essential to it happening, but he
8 was not himself an arms dealer or drug trafficker.

9 THE COURT: Oh, obviously. He was not himself the
10 person who supplied the arms.

11 MR. SCHACHT: Yes.

12 THE COURT: And he was not himself the person who
13 processed the drugs.

14 MR. SCHACHT: Well, not just not processed the drugs,
15 because of course, the man he introduced him to didn't process
16 them either, but he was not the person who had the direct
17 access either. He didn't have drug suppliers. He didn't have
18 weapons suppliers. He just knew people who get those things.
19 Obviously that's a serious crime. I'm just trying to
20 distinguish it between him being the key person who is a
21 professional weapons trafficker. That's all.

22 THE COURT: Oh, OK. So you really don't deny that he
23 did all the things that are set out in Mr. Turner's letter; you
24 just think that that makes him not a weapons dealer.

25 MR. SCHACHT: You asked me specific questions about

I21WjabS

1 his letter, and all I contested about his letter is that
2 Mr. Turner repeatedly uses the word "FARC," and in the
3 conversations, the actual conversations, the word "FARC" in
4 those conversations is not repeatedly used. And he didn't put
5 it in quotes. I'm not saying he did something wrong. He was
6 repeating.

7 THE COURT: No. It's a paraphrase. It's a
8 paraphrase.

9 MR. SCHACHT: That's all.

10 THE COURT: It's clear from the context of the
11 conversations that they were talking about FARC, one hopes.
12 Your client did plead guilty to providing material support to a
13 terrorist organization.

14 MR. SCHACHT: At the beginning of the original sort of
15 introduction of the participants.

16 THE COURT: You're not suggesting that your client
17 didn't think this was all about FARC, are you?

18 MR. SCHACHT: Absolutely not.

19 THE COURT: OK.

20 MR. SCHACHT: At the beginning, there was one
21 conversation about FARC, and then there's many subsequent
22 conversations where no one's mentioning FARC anymore.

23 THE COURT: But we're talking about the same deal that
24 we were talking about at the beginning, and at the beginning,
25 it was clear that it was FARC, right?

I21WjabS

1 MR. SCHACHT: Yes.

2 THE COURT: And your client knew that, right?

3 MR. SCHACHT: Yes, and I think I say that in my
4 presentation.

5 THE COURT: OK. Fine.

6 Sir, I'll hear you on sentencing.

7 MR. SCHACHT: I'd like to talk just briefly about how
8 this came about.

9 My client had a prior relationship for many years with
10 the person I call Joseph in my memorandum. The details of
11 their history is not really relevant too much one way or the
12 other toward sentence, only inasmuch as it gets to the issue of
13 why is my client approached. I know, because he's told me, my
14 client's told me, but I also know from the discovery, that my
15 client was told -- I'm sorry. The informant was told that my
16 client had money problems and owed a lot of money at the time
17 when this began, in 2012.

18 It was also clear to the informant, because they knew
19 each other, that my client had a drug and alcohol problem. In
20 fact, at the very first meeting, the informant -- and I'm not
21 just taking my client's word for this; I have this in the
22 paginated discovery, page 98 of the discovery -- the first
23 thing that the informant gives to my client is, he buys him
24 whiskey, a couple bottles of whiskey. There's nothing
25 necessarily wrong or illegal about that, but my client is

I21WjabS

1 targeted. He's in a weakened position.

2 You know from my paperwork, and Ms. Shroff did a
3 wonderful job of getting a doctor's report, which is exhibit A
4 to my memorandum, and I think that goes into great detail to
5 explain the psychological state that my client was in at the
6 time that these crimes occurred.

7 I don't think any of that rises to the level of a
8 legal defense. Intoxication generally is not a defense under
9 our system. Mental illness is not a defense unless it rises to
10 a certain level that's extremely hard to reach. My client was,
11 though, and I think this is also undisputed also, suffering
12 from personal drug abuse, suffering from severe mental health
13 issues, suffering from alcohol abuse, and all of this was
14 happening and was essentially untreated in this key 2012-2013
15 period.

16 Part of the reason why this conspiracy lasts so long,
17 and you'll see it's a multiyear charge; it's a multiyear
18 conspiracy. It's, of course, a DEA setup, so no weapons are
19 ever delivered. The reason this takes so long is because in
20 the beginning, my client is resistant to the informant because
21 they have a prior bad relationship, and so my client's
22 suspicious, Why is this guy talking to me even? And my client
23 is essentially worn down. And this is not a defense, and I'm
24 not saying he's innocent.

25 The informant essentially tells my client, You can

I21WjabS

1 make millions of dollars.

2 THE COURT: Because your client's never done anything
3 like this before.

4 MR. SCHACHT: My client --

5 THE COURT: Never done anything like this before.

6 MR. SCHACHT: My client has never --

7 THE COURT: Your client's never done anything.

8 MR. SCHACHT: He's never tried to supply an
9 international terrorist organization with drugs or weapons.
10 That's true. And I'm not remotely suggesting it's an
11 entrapment situation. I'm saying that my client, in his mental
12 state that's discussed in exhibit A, when called up by an
13 informant and pushed over basically a 12-month period, offered
14 what amounts to millions of dollars in profits that are held
15 out to him, agreed to do this. He agreed to introduce the
16 people.

17 That doesn't make him innocent. I think it takes the
18 case, under the 3553(a) factors, out of a situation where
19 someone should be punished as other people in similar cases
20 are. I cited two cases in my memorandum of people in this
21 district, one of whom lost a jury trial with similar charges of
22 supplying missiles to FARC or to terrorist organizations, both
23 of whom received only ten-year sentences, and that's in this
24 district. And those were younger, from what I gather, younger,
25 healthier people. Certainly they were younger, which gets to

I21WjabS

1 another issue, the issue of my client's health, and you
2 mentioned the life expectancy report that was prepared by prior
3 counsel.

4 This report also -- of course, who knows how long
5 someone's going to live? He could live one year or he could
6 live 30 years.

7 THE COURT: True.

8 MR. SCHACHT: Nobody knows.

9 But someone in his situation, according to this
10 report, which was made a year ago, has a life expectancy of
11 about 7.9 years. Now it's about maybe 6.9 years, so a sentence
12 of 15 years based on the actuarial chart and table would
13 essentially be a life sentence.

14 THE COURT: So is a sentence of ten years, so is a
15 sentence of eight years, based on the actuarial tables.

16 MR. SCHACHT: A sentence of eight years wouldn't be,
17 because he's got time served.

18 THE COURT: He's got a couple of years under his belt.

19 MR. SCHACHT: He's got time in prison already.

20 THE COURT: But ten years would be.

21 MR. SCHACHT: I think when you combine these factors,
22 how did he get into the case, I think that's a mitigating
23 factor. I know your Honor's personally experienced.

24 THE COURT: I just don't see why it's a mitigating
25 factor how he got into the case.

I21WjabS

1 MR. SCHACHT: I think it's a mitigating factor. I
2 know you've seen other cases as a judge. It's a mitigating
3 factor because the government approaches somebody who is not an
4 ideological terrorist or not a terrorist of any sort. They
5 literally offer --

6 THE COURT: No, he's somebody who is willing to supply
7 arms to a terrorist. That's just as bad.

8 MR. SCHACHT: But they're not doing that.

9 THE COURT: He is doing it.

10 MR. SCHACHT: He's at home.

11 THE COURT: He's facilitating it.

12 MR. SCHACHT: He's at home, using drugs, owing money,
13 and they call up and they go, How would you like a few million
14 dollars?

15 THE COURT: I am particularly and acutely sensitive to
16 this issue in appropriate cases. I am, because I had the case
17 of cases. I had the Newburgh Four case. I had the ultimate
18 entrapment case that turned out not to be entrapment, according
19 to the jury and the Second Circuit. I'm kind of sensitive to
20 this issue, but I'm trying to fit your argument into, I guess,
21 my sensitivity, because I don't see that it makes any
22 difference that he was somebody who was doing drugs at the
23 time. He was approached presumably, at least I get this
24 suggestion from the government, he was approached not without
25 reason.

I21WjabS

1 The principal defendant in the Newburgh Four case was
2 approached like off the street, a wild guess. But your guy --

3 Am I correct, Mr. Turner, he was a target of an
4 investigation, a sting operation? He was the target?

5 MR. TURNER: That's correct, your Honor.

6 THE COURT: Right.

7 He was known to the authorities before he was
8 approached, and I think that's very different than the kind of
9 case where someone's trolling around the city of Newburgh,
10 going to the mosque, the black Muslim mosque, and asking
11 questions about terrorism. It's just a very different
12 scenario.

13 MR. SCHACHT: I agree with you that he was targeted.

14 THE COURT: OK.

15 MR. SCHACHT: There's no dispute there.

16 THE COURT: He wasn't targeted for no reason. The
17 government had some reason to think it would be worth investing
18 some time and effort and resources in looking into your
19 client's business dealings.

20 MR. SCHACHT: And I think I outlined the reasons in my
21 memorandum. The reason he's targeted is because the informant
22 with whom he has a prior multiyear relationship, Joseph -- they
23 hate each other, have made trouble for each other over the
24 years.

25 THE COURT: Oh, Joseph has lied to the government.

I21WjabS

1 Your position is that Joseph lied to the government. Your
2 client's never done anything, no reason for the government to
3 be interested in him, but Joseph went and lied to the
4 government.

5 Your client's nodding, so I know he hears what I'm
6 saying. Joseph went to the government and told a big fat lie.

7 MR. SCHACHT: I'm not saying that everything that
8 Joseph said is a big fat lie, and I'm not saying this has
9 anything to do even with what my client told me.

10 Joseph, and I'm looking at pages 2107 and 2109 of the
11 discovery, which are DEA-6s, and you can see in these 6s that
12 Joseph doesn't really even know so much about him. Joseph
13 calls up this other person named Makki, who I've mentioned, who
14 is not mentioned in the probation report, who's not indicted,
15 and Makki is telling Joseph that he, Makki, thinks that my
16 client cannot get drugs but maybe can get weapons, and he, my
17 client, has a lot of financial problems and owes a lot of
18 money.

19 I'm not saying Joseph's lying. I'm saying Joseph gets
20 this hearsay information from some person, who is not mentioned
21 in the probation report, not indicted, and then based on that
22 information from Mr. Makki to Joseph, the government targets
23 him. I'm not saying anybody's even necessarily doing anything
24 wrong. I'm just saying that it's not so far off of going
25 around to the black Muslim mosque in Riverdale and trolling for

I21WjabS

1 people who, if you offer them enough money, may do something.

2 So they find my client. They offer him millions of
3 dollars, and he says yes. I'm not saying he deserves a prize
4 for that, that he's a great guy. I'm saying that these types
5 of cases where they're supposedly looking for terrorists or
6 terrorism, and they offer people -- the DEA -- a lot of money,
7 and you made the point quite well, your Honor, before, when you
8 said Mr. Turner, myself, you, would we know where to get
9 missiles, probably not. My client knew where to get missiles,
10 and the three of us wouldn't know, so it's, of course, a factor
11 on the government's side, but the reality is he was a
12 government official and he knew where to get these things.

13 THE COURT: I'm a government official.

14 MR. SCHACHT: Well, you're in the judiciary. If you
15 were in the executive branch, you might know where to get
16 missiles, depending on what part of the executive branch.

17 THE COURT: You're in the executive branch. Do you
18 know where to get missiles, Mr. Turner?

19 MR. TURNER: No, your Honor.

20 MR. SCHACHT: I think when you look at what is
21 undisputed, his poor health, his life expectancy, which of
22 course, we agree we can't be sure what it is --

23 THE COURT: Right.

24 MR. SCHACHT: -- the horrendous experience he's had in
25 jail, and of course, he deserves to be in jail, because he

I21WjabS

1 needs to be punished, but he's suffered above and beyond, and I
2 talk about that in my memorandum. And I think when you look at
3 the whole picture of the case, not just pulling out one
4 argument, because I agree with you, he doesn't deserve a
5 sentence of time served that he's done or even of seven years
6 based on any one argument. But when you look at it
7 collectively, how he was brought into this crime, what his
8 mental state was at that time, he's now been in jail for quite
9 a while. He's clean. He's not abusing any substances.
10 Luckily, at the MDC they're giving him very good mental health
11 treatment and psychiatric care, and all of those things
12 together justify a substantially reduced, nonguidelines
13 sentence so that he has the hope of getting out of jail and
14 seeing his family again before he dies.

15 That's my argument, and thank you very much for
16 listening.

17 THE COURT: Thank you, sir. I really appreciate the
18 careful presentation that you made.

19 Mr. Turner, does the government have anything else it
20 wishes to add in response?

21 MR. TURNER: No, your Honor.

22 THE COURT: Mr. Jaber, is there anything that you want
23 to say to me before I sentence you?

24 THE DEFENDANT: Of course, your Honor.

25 THE COURT: Yes, sir.

I21WjabS

1 THE DEFENDANT: Good evening, your Honor.

2 THE COURT: Sir.

3 THE DEFENDANT: Your Honor, if you are kind enough to
4 allow me ten minutes to explain the whole situation to you?

5 THE COURT: I would urge you to turn to your attorney.
6 Sir, obviously you need to speak to your client.

7 I'll listen to anything you have to say.

8 THE DEFENDANT: Your Honor, Joseph kept on calling me
9 for a whole year, and I kept on telling him, What is it that
10 you want from me? That's all in the discovery, all those
11 different conversations. He said that there was a business
12 deal with a Greek man. I told him, What kind of business is
13 that?

14 (Counsel conferred with defendant)

15 THE DEFENDANT: He was vague with me, and he entrapped
16 me into this drug thing.

17 (Counsel conferred with defendant)

18 THE DEFENDANT: Your Honor, all I'm asking from you is
19 mercy. I admit that I committed a crime, but I didn't do it
20 thoughtfully. It wasn't like I was eager to commit that crime.
21 I was under the influence of drugs.

22 (Counsel conferred with defendant)

23 THE DEFENDANT: I'm asking forgiveness from you and
24 from the American nation and from the U.S. government. I do
25 love the American people, and I had a good history of

I21WjabS

1 interaction with the U.S. embassy and the Ivory Coast. We
2 cooperated against terrorism.

3 And your Honor, I could have remained in Beirut,
4 Lebanon. I would have been out of reach, but I chose to come
5 here. I refused to stay in Prague, the Czech Republic, and I
6 asked that I be transferred, extradited to the United States.
7 I did not fight the extradition process.

8 (Counsel conferred with defendant)

9 THE COURT: That wasn't quite how I understood the
10 facts.

11 THE DEFENDANT: There was an operation in which six --
12 five Czech citizens were abducted in Lebanon, and I tried my
13 best to abort that operation. And when it was finally done,
14 they wanted to exchange me for one of their Czech citizens, but
15 I refused. I said no, I wanted to go to America, not Lebanon,
16 and I resisted the abduction operation. I personally resisted
17 it. And I gave them information, to the government over there.
18 I sent four letters to the U.S. ambassador in Prague, and if
19 these two other defendants, the two codefendants, were brought
20 to the United States, I am sure that the U.S. Attorney's Office
21 would have used me as a witness to testify against them.

22 (Counsel conferred with defendant)

23 THE DEFENDANT: And your Honor, you know about my
24 health.

25 THE COURT: I do.

I21WjabS

1 THE DEFENDANT: I have prostate cancer now and I have
2 developed new ailments.

3 So your Honor, finally, I plead with you for mercy. I
4 want to see my very old mother. She's 82 and she's dying, and
5 I have an 11-year-old daughter who may end up on the street. I
6 was responsible for supporting my entire family; now they will
7 end up homeless. My older daughter has two children whom I
8 never saw. One is two years old and one is one year old, the
9 one who sent you one of the letters.

10 So I am begging you for mercy and to let me go. This
11 was a once-in-a-lifetime mistake but will never be repeated.
12 I'm a man of peace. I helped achieve peace in my country. I
13 had a charity foundation, which helped the poor.

14 (Counsel conferred with defendant)

15 THE DEFENDANT: And the needy. This was my previous
16 life, and nothing -- I will never do anything wrong again.

17 Thank you very much for allowing me this time to
18 speak, your Honor.

19 THE COURT: Have a seat.

20 Is there anything the government wishes to say?

21 MR. TURNER: No, your Honor.

22 THE COURT: Thank you.

23 Defense counsel.

24 MR. SCHACHT: No. Thank you very much.

25 THE COURT: All right. I confess that I was troubled.

I21WjabS

1 Well, the first thing I should say is that it is my
2 practice in these cases to read the defense submission first.
3 Usually that works well, because the government tends to be
4 very late with its submission, but it is my practice in these
5 cases to read the defense submission first. And I confess that
6 my antenna went up when I read Mr. Schacht's submission,
7 because I have this great sensitivity to this issue of sting
8 operations.

9 So I read Mr. Schacht's submission with great care,
10 and it didn't quite cohere for me, but I allowed, as how in
11 other cases, we had trials, we had hearings, I heard some
12 evidence, I knew perhaps somewhat more about the defendant or
13 about the case than I did in this particular instance where
14 what I had was the plea minutes and the PSR, but even though
15 the story didn't quite cohere, why would the government be
16 starting an investigation into this guy -- starting an
17 investigation into this guy, not running around looking for a
18 guy and then starting an investigation.

19 That's the colossal difference between this case and
20 the Newburgh Four case. In fact, in the Newburgh case, the
21 government went around looking for a person to investigate, and
22 in this case, the government came prepared to investigate
23 Mr. Jaber, so that things didn't quite cohere for me. But it
24 was with a healthy degree of skepticism that I picked up the
25 government's submission to read second.

I21WjabS

1 The government's submission is tremendously
2 convincing, in significant part, because the government
3 represents, and I have no reason to disbelieve the
4 representation, that in recorded conversations, this defendant,
5 Mr. Jaber, the person whose conduct the government set out to
6 investigate, via the tactic of a sting operation, but the
7 intended target or one of the intended targets of the
8 investigation, from the get-go, represented that he could
9 facilitate very serious criminal conduct, weapons dealing.

10 There are a lot of people in the executive branch of
11 the United States government who know that you can buy weapons
12 at Lockheed Martin, you can buy weapons at Boeing, you can buy
13 weapons at Colt. You can buy weapons at a number of companies
14 legitimately, but they don't know international arms dealers.
15 Mr. Jaber, it seems, knows international arms dealers. Whether
16 by virtue of his being a government official on the Ivory Coast
17 or otherwise doesn't matter. He knew enough to know that there
18 were people who did illicit arms transactions that he could put
19 these folks in touch with.

20 MR. SCHACHT: Yes, your Honor. It's just it's not
21 from the get-go, though.

22 THE COURT: My turn to talk.

23 Am I wrong that Mr. Jaber facilitated the arms
24 transaction by being the one to bring in the people who were
25 going to supply the arms?

I21WjabS

1 MR. SCHACHT: You're correct, but it's not from the
2 get-go.

3 THE COURT: It doesn't matter.

4 MR. SCHACHT: It's after almost a year of importuning
5 and pressuring. That's all.

6 THE COURT: It doesn't make any difference. He
7 happens to know something that most of us do not know in this
8 world, and that is where to get illicit arms.

9 MR. SCHACHT: I think that's true, but I think the
10 assistant to the president in any of the countries, neighboring
11 countries of Ivory Coast or anywhere from that part of the
12 world, in West Africa, they do know where.

13 THE COURT: Well, I don't know that. I don't know
14 that to be true. But I know that it's not a good thing if you
15 know where you can get illicit arms and then you meet someone
16 who says he wants illicit arms -- I don't care how you meet
17 him -- and you say: I can bring you guys together; I can help
18 you do this deal. Because the flow of arms, illegitimately,
19 illicitly, across borders, to terrorists is a big part of why
20 the world is in the mess that it's in today.

21 The underground arms trade is one of the most
22 horrifying things that is going on in this world. The notion
23 that people would solve their money problems by selling things
24 that kill to people who want to kill is terrifying. It's
25 disgusting and should be punished to the fullest extent of the

I21WjabS

1 law.

2 Then you add on drugs and you add on the money
3 laundering. Mr. Jaber is a very talented man at very bad
4 things. And however he got the information, the government
5 appears to have had some reason to suspect that that was true
6 before they started looking into Mr. Jaber's conduct, so that
7 differentiates him from my entrapment defendant, Mr. Cromley.

8 As it turns out, Mr. Jaber could do everything he said
9 he could do. The fact that nothing bad happened, because this
10 was a sting operation, this was part of a government
11 investigation, is really of no legal moment. This man was
12 fully willing to make sure that killers could buy the
13 implements of killing; happy to do it. As long as it solves
14 his money problem, helps keep him in drug, that was fine. I
15 really don't see any mitigating factors here.

16 Now, I've been very inquisitive during the course of
17 this sentencing, more so than at most sentences, because I
18 wanted to be really sure in my own mind that I was not dealing
19 with a Newburgh-type situation. I'm not. Not here, not this.

20 This crime is fully deserving of the maximum
21 punishment the law allows. In this particular case, the
22 defendant is lucky the statute mitigates. The guidelines
23 sentence is, what, in the high 200s, low 300 months?

24 MR. TURNER: 360 to life, your Honor.

25 THE COURT: 360 to life, your Honor. OK.

I21WjabS

1 The statute prevents me from imposing that sentence.
2 The statute limits it to 15 years. While I hear you about
3 Mr. Jaber's life expectancy, the fact that he was an older
4 gentleman when he committed these crimes and when he admitted
5 to these crimes and when he took his guilty plea and became
6 incarcerated and all that, I don't have the power to say,
7 You'll never get out of jail, and he very well might someday.
8 And if he doesn't, well, he made his own bed.

9 I appreciate that information was given to me that's
10 at exhibit C of the defense submission consisting of a letter
11 from Warden Tatum. I have looked at that letter. I've thought
12 about that letter. It is a wonderful thing that Mr. Jaber has
13 been helpful in the detecting of contraband, but I tend to
14 agree with the government. That's small potatoes against what
15 he tried to do, to line his own pockets, to support his own
16 habits, without regard to who else might be hurt, who else
17 might be killed, who else might be dragged down.

18 The fact that his codefendants, who richly deserve to
19 be here, are not here is no concern of mine and is not
20 relevant, in my view, to the determination of what sentence
21 should be imposed on Mr. Jaber for Mr. Jaber's conduct. There
22 are no what-ifs here.

23 I am sorry, sir, that you have not seen your
24 grandchildren. I am sorry, sir, that your family must find
25 some other means to support itself. I am sorrier than you know

I21WjabS

1 that you may never again see your mother. But what you did was
2 an extraordinarily reprehensible thing, and if I had the power,
3 I would actually punish you rather more severely than the law
4 allows me to, but there is a statutory maximum sentence here of
5 15 years, and 15 years, given everything that's set forth in
6 the government's letter, to which the defendant has admitted,
7 is the appropriate sentence in this case.

8 Will you stand, sir.

9 I've reviewed the presentence report. I accept and
10 adopt as my findings the description of the offense and the
11 offense conduct and its calculation of the guidelines. The
12 total offense level is 40. The defendant's criminal history
13 category is I.

14 I accept that because the offense involved a federal
15 crime of terrorism that is enhanced to a criminal history
16 category of VI. I accept and adopt as my findings the
17 offender's characteristics, which are set forth beginning at
18 paragraph 63 of the presentence report.

19 I have considered all of the Section 3553(a) factors.
20 Given the nature of this offense and the circumstances under
21 which it was committed, I believe that that outweighs any
22 consideration of the history and the characteristics of the
23 defendant, and that the need to punish this crime and to send a
24 message that this sort of behavior will not be tolerated
25 outweighs any other consideration set forth in the sentencing

I21WjabS

1 statute and informs my decision to impose a guidelines
2 sentence.

3 Accordingly, under docket No. S1 13 Cr. 485-01, at
4 total offense level 40 and criminal history category VI, I
5 hereby, as recommended by the department of probation, sentence
6 you to be remanded to the custody of the attorney general of
7 the United States and the Bureau of Prisons for a term of 180
8 months.

9 I am not imposing a term of supervised release on the
10 defendant.

11 The probation department does not recommend a fine,
12 and I'm not imposing a fine.

13 Restitution is not applicable.

14 I understand that there is a consent preliminary order
15 of forfeiture that will be entered in this case.

16 Is that correct, Mr. Turner?

17 MR. TURNER: Yes, Judge.

18 THE COURT: And I'm imposing a special assessment of
19 \$100, which is due and payable immediately.

20 You may be seated.

21 Counsel, are there any recommendations that you wish
22 me to make concerning place of incarceration?

23 MR. SCHACHT: Yes, your Honor.

24 My client, as you know from the materials you've read,
25 is availing himself of the medical treatment that the Bureau of

I21WjabS

1 Prisons affords, so I would simply ask that you recommend --
2 they would probably do this in any event -- that he be
3 designated to a place that gives him the most appropriate
4 medical treatment consistent with his needs.

5 THE COURT: The defendant has some significant medical
6 issues, and the Bureau of Prisons needs to take that into
7 account in designating him. It is, in the opinion of the
8 Court, imperative that the Bureau of Prisons consider whether
9 this defendant belongs in a medical facility. I can't make
10 that recommendation, because I'm not a doctor, but the nature
11 of the charges should not, and the crime of conviction should
12 not, in the view of this Court, be entirely determinative if
13 there are medical issues that need to be addressed.

14 MR. SCHACHT: Thank you.

15 THE COURT: I have before me a consent preliminary
16 order of forfeiture and money judgment.

17 Mr. Turner, is this signed by you on behalf of
18 Mr. Berman?

19 MR. TURNER: Yes, it is, your Honor.

20 THE COURT: Mr. Schacht, have you signed this
21 document?

22 MR. SCHACHT: Yes. My client and I just signed it
23 this afternoon.

24 THE COURT: Mr. Jaber, I have a document which has a
25 signature above your name. Is that your signature, sir?

I21WjabS

1 THE DEFENDANT: Yes.

2 THE COURT: Did you put your signature on this
3 document?

4 THE DEFENDANT: Yes.

5 THE COURT: OK. When did that, did anyone force you
6 to do it? Did you do that of your own free will?

7 THE DEFENDANT: No.

8 THE COURT: No one forced you to do it?

9 THE DEFENDANT: No.

10 THE COURT: OK.

11 Therefore, as a result of the offense charged in Count
12 Three of the indictment to which the defendant has pled guilty,
13 a money judgment in the amount of \$14,000 in United States
14 currency, representing the amount of proceeds traceable to the
15 offense charged in Count Three of the indictment that the
16 defendant personally obtained, shall be entered against the
17 defendant. Pursuant to Rule 32.2(b)(4) of the Federal Rules of
18 Criminal Procedure, this consent preliminary order of
19 forfeiture and money judgment is final as to you, Faouzi Jaber.
20 It shall be deemed part of your sentence and included in the
21 judgment of conviction therewith.

22 All payments on the outstanding money judgment shall
23 be made by postal money order, bank or certified check, made
24 payable in this instance to the United States Marshals Service
25 and delivered by mail to the United States Attorney's Office

I21WjabS

1 for the Southern District New York, attention money laundering
2 and asset forfeiture unit.

3 The United States Marshals Service is authorized to
4 deposit the money judgment in the asset forfeiture fund, and
5 the United States shall retain title to such forfeited
6 property. Pursuant to Title 21, United States Code Section
7 853(p), the United States is authorized to seek forfeiture of
8 substitute assets of the defendant up to the uncollected amount
9 of the money judgment, and because this is a judgment of
10 forfeiture and not restitution, it is not a criminal financial
11 penalty, and it is therefore not deductible from the
12 defendant's prison wages.

13 Pursuant to Rule 32.2(b)(3) of the Federal Rules of
14 Criminal Procedure, the United States Attorney's Office is
15 authorized to conduct any discovery needed to identify, locate
16 or dispose of the forfeitable property; and the Court retains
17 jurisdiction to award consent preliminary order of forfeiture
18 and money judgment and to amend it as necessary.

19 I am signing this document at 5:40 p.m. on the 1st of
20 February 2018.

21 You may be seated, sir.

22 Was there an appeal waiver in this case?

23 MR. TURNER: Yes, your Honor, there is.

24 THE COURT: And that was to 15 years?

25 MR. TURNER: It was to any sentence at or below 180

I21WjabS

1 months.

2 THE COURT: At or below 180 months.

3 Mr. Jaber, do you recall that at the time you pled
4 guilty, you also signed a letter that was provided by the
5 government?

6 THE DEFENDANT: No. I forgot.

7 THE COURT: Does anyone have a copy of the letter to
8 show him?

9 Thank you, Mr. Turner.

10 MR. SCHACHT: Yes, your Honor. He remembers the plea
11 agreement. He was confused. He was thinking about some other
12 letter.

13 THE COURT: It's OK. It's the letter that was signed
14 at the time of the plea.

15 Is that your signature on the letter?

16 THE DEFENDANT: Yes, it is.

17 THE COURT: And did you sign the letter of your own
18 free will?

19 THE DEFENDANT: No.

20 THE COURT: No, you did not? Someone forced you to
21 sign the letter? Did someone threaten you to get you to sign
22 the letter?

23 (Counsel conferred with defendant)

24 THE DEFENDANT: Sabrina forced me.

25 THE COURT: She did? She forced you? The attorney

I21WjabS

1 Sabrina?

2 (Counsel conferred with defendant)

3 THE COURT: I didn't ask whether she advised you that
4 it was in your best interest. I asked you whether she
5 threatened you or coerced you.

6 THE DEFENDANT: No, no, no, no.

7 THE COURT: No, no. She just advised you that it was
8 in your best interest to do it, am I correct?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. And you did sign it, is that
11 correct?

12 THE DEFENDANT: Yes.

13 THE COURT: In the letter, it said that if I sentenced
14 you to 180 months -- 15 years -- or less, you would not take an
15 appeal from your sentence or file any lawsuit contesting the
16 legality of your sentence. Do you recall that?

17 THE DEFENDANT: Correct.

18 THE COURT: Did the attorney Sabrina discuss that with
19 you?

20 THE DEFENDANT: Yes, she did.

21 THE COURT: OK. So you knew that was in the letter
22 when you signed it, is that correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Well, I've sentenced you to 180 months, 15
25 years, and it's my understanding that by signing the letter,

I21WjabS

1 you have waived your right to take an appeal from your
2 sentence. Is that also your understanding?

3 THE DEFENDANT: Yes.

4 THE COURT: OK. Have a seat.

5 Is there anything else from the defense?

6 MR. SCHACHT: No. Thank you, your Honor.

7 THE COURT: Mr. Schacht, I thank you kindly. You came
8 in at the very end of the case, and I thank you for the careful
9 attention you've given to the case and for the excellent
10 presentation that you've made on behalf of your client.

11 MR. SCHACHT: Thank you, your Honor.

12 THE COURT: Mr. Turner, is there anything else from
13 the government?

14 MR. TURNER: One housekeeping item, your Honor.

15 We would move that the open counts in both the initial
16 indictment as well as the superseding indictment be dismissed,
17 your Honor.

18 THE COURT: All open counts against Mr. Jaber are
19 dismissed.

20 These proceedings are closed.

21 (Adjourned)
22
23
24
25